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CURRENT TOPICS

The Englishman's Home

THERE is a definite movement in official and unofficial circles in favour of encouraging owner-occupiers. On 1st August the stamp duty on conveyances of houses costing up to £3,500 will be abolished. Two boroughs, Windsor and Ilford, recently announced their intention to offer houses for sale to certain categories of purchasers, such as those on their waiting lists, and to ask for deposits of only £1 and £5 respectively. The reduction in the Bank Rate may make house purchase easier because, although there is no reason to expect any reduction in interest rates, presumably the flow of money into the building societies will increase once the temptations offered by rival investments have adjusted themselves. Incidentally, we congratulate the building societies on having weathered the financial storm of the past few months successfully and with so little inconvenience to borrowers. The question now arises whether it is possible to reduce any further the cost of home ownership, and the suggestion which comes to mind immediately is the extension of compulsory registration of title. Although the opening of the Land Registry's new offices outside London has eased the situation, the greatest single obstacle in the way of extension is the shortage of qualified staff. It is worth considering amending the Land Registration Acts so as to provide for the compulsory registration of the title of all land which is being used for building for the first time. The difficulties of unregistered conveyancing are often most apparent when a piece of land is split into plots, and during the past few years many developers outside the compulsory areas have been registering their titles.

Hastening Death

THERE cannot be any doubt as to the criminal responsibility of a person who intentionally hastens the death of a sick man whose life, in the course of nature, might soon have been brought to an end *ex visitatione Dei*. Although verification of this proposition may be found in Russell on Crime, 10th ed., vol. 1, p. 471, a passage which was applied by the Natal Provincial Division of the South African Supreme Court in *R.* v. *Malaki* [1950], 1 S.A.L.R. 340, recent reported judicial authority is difficult to find. However, in *R.* v. *Murton* (1862), 3 F. & F. 492, Byles, J., stated that if it could be said that the life of the deceased had been shortened by the acts of the prisoner, he should be convicted, and in *R.* v. *Edmunds* (1909), 2 Cr. App. R. 257, it was held that where it appears that " the injuries accelerated the death, the question whether the deceased was in a weak state of health at the time they were

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inflicted is immaterial." This matter has recently arisen in very unusual circumstances and we are indebted to the *Yorkshire Post*, 12th June, for a short account of the trial before STREATFEILD, J., at Derbyshire Assizes on the previous day. The accused had discovered that his elderly mother was suffering from cancer of the throat and a week later he shot her as she slept. The jury found him not guilty of murder and asked that he might be dealt with leniently on the charge of manslaughter. This plea was not in vain and his lordship, when sentencing the defendant to eighteen months' imprisonment, told him that "the sentence is not intended as a punishment. It is intended, as far as I am concerned, to provide you with the period in which I think and believe you will be given every consideration and such treatment as may be necessary to assist you to recover your balance."

Huntsman's Christmas Gifts

THE decision in *Wright* v. *Boyce* (*Inspector of Taxes*) which we noted at p. 185, *ante*, has now been affirmed by the Court of Appeal. It will be remembered that the court of first instance had found that a huntsman was liable to pay income tax on gifts of money made to him at Christmas time by members and followers of a hunt. JENKINS, L.J., distinguished the decision of the House of Lords in *Seymour* v. *Reed* (1926), 43 T.L.R. 584, which is authority for the proposition that the proceeds of a professional cricketer's benefit are not assessable to income tax, and held that it was the regular character of the subvention which substantially supported the view that the payments were made to Mr. JOSEPH WRIGHT as holder for the time being of the office of huntsman. The Court of Appeal was unanimous in thus upholding the decision of VAISEY, J., and the Special Commissioners for Income Tax.

Juvenile Crime

AT a time when the last three years have shown an alarming increase in juvenile crime, we are pleased to be able to note the expression of two further authoritative opinions as to the cause of a situation which is giving rise to so much anxiety. As in the case of the recommendations of the Fisher Group and the Council for Children's Welfare (see p. 313, *ante*), we will, at this stage, withhold comment of any kind. Mr. BUTLER, the Home Secretary, is particularly concerned because this trend in delinquency follows "the most massive educational and social reforms for a century." He takes the view that "our spiritual force is not strong enough, our educative influences are not enduring enough, our knowledge of what is happening is not profound enough, and the diagnosis of the effect of alleged prosperity upon the individual is not sufficiently understood." Mr. Butler asks that each juvenile offender should be "personally handled" and that those who are responsible for awarding punishment should be given a wide discretion. In their memorandum submitted to the Departmental Committee on Children and Young Persons (referred to at p. 442, *ante*) the Council of The Law Society reach the conclusion that the major cause of juvenile crime is to be found in lax parental guidance and discipline. It is suggested that defects in the system of juvenile courts can only be remedied by raising still higher the standard in those engaged in its application, from the magistrate to the probation officer. Magistrates sitting in juvenile courts should be specially qualified to deal with juveniles and have a real understanding of young people. Wherever possible, prosecutions should be commenced by the laying of an information and s. 49 of the Children and Young Persons Act, 1933, should be amended to allow for full publication of proceedings in juvenile courts. The Council obviously see in this proposed amendment of the law a way of bringing home to parents the nature and extent of their parental duties and responsibilities, but, recognising its dangers, they suggest that the court, in particular cases, should have power to withhold publication. Not least of their recommendations is that which, if adopted, would lead to the use by children of the following simplified form of oath: "I promise almighty God that what I shall say to this court shall be the whole truth."

The Bar: Annual Statement for 1957

THE most satisfactory feature of the past year's activities of the General Council of the Bar, reported in the Annual Statement for 1957, to be put before the annual general meeting of the Bar on 14th July, is the successful achievement of the Bar Council and The Law Society in securing increases in counsel's fees in interlocutory work in all the Divisions of the High Court. The joint statement by The Law Society and the Bar Council, published in the September issue of the *Law Society's Gazette*, also appears in full in the statement. Market rates amounting to as much as six guineas in the case of statements of claim and advices on evidence may take some getting used to, and it is pleasing to read that the new agreement has been widely observed by counsel, their clerks and solicitors. It is not so pleasing to learn that even a few instances of the taxing down of marked fees have occurred. The Council invite further information on this subject. Solicitors will without doubt give full support to the Bar's efforts to make the agreement completely effective. The Bar Council has been asked by the Royal Commission on Doctors' and Dentists' Remuneration to help them in their inquiry into the comparative conditions of the various professions, and confidential questionnaires have already been sent out to barristers. The result will be awaited with great interest. The report ends on the significant note that the number of practising barristers in October, 1957, was 1,968 (including 78 women), of whom 466 practise wholly or mainly in the provinces, and that the corresponding figures for October, 1956, were 1,973 (including 68 women), of whom 474 practised in the provinces. The total number of daring souls starting practice in 1956–57 was 16. The corresponding number for the peak post-war year (1948–49) was 194.

Judicial Definition

IN a recent action in the High Court in which a fourteen-year-old schoolgirl sought and was awarded damages in respect of injuries which she received when she was struck by a van while she was on a pedestrian crossing, DONOVAN, J., remarked that the plaintiff had recovered sufficiently to take part in those "energetic convulsions and gyrations representing the dance of modern youth." We wonder, can it now be said that the legal profession has been furnished with a universally acceptable judicial definition of rock 'n' roll or will there be those ("squares," we assume, they would be called) who feel that his lordship's words are inadequate for this purpose?

JUSTICE IN HUNGARY TODAY

THE HUNGARIAN SITUATION AND THE RULE OF LAW

THE International Commission of Jurists is the first international legal organisation to condemn the recent political murders of which Imre Nagy and his compatriots were the victims. This non-governmental organisation which has Consultative Status with the Economic and Social Council on the United Nations, represents the views of lawyers in many countries, who, although of differing political opinions, agree that in the international relations of their countries and in their internal systems of law the Rule of Law shall prevail. " By the Rule of Law they mean adherence to those institutions and procedures . . . which experience and tradition . . . have shown to be essential to protect the individual from arbitrary government and to enable him to enjoy the dignity of man."*

The legal implications of the Soviet intervention in and after November, 1956, in Hungary, the violations of human rights and fundamental freedoms, especially by extensive application of summary jurisdiction instituted by the Kadar regime, were dealt with by an international conference of distinguished lawyers summoned by the I.C.J. and held on 2nd March, 1957, at The Hague. The documents put before the Conference and its findings were submitted to and substantially accepted by the United Nations Special Committee on the Problem of Hungary.

These facts and views, together with a massive documentation of Hungary's international obligations and also of decrees and official statements of the Kadar regime in respect of the administration of justice in Hungary, were published by the Commission in April, 1957, in order to " draw the attention of lawyers throughout the world to the grave shortcomings of the judicial system in that country " and in order to fight against " the dangerous temptation to inactivity and to a reluctant acceptance of the *fait accompli* " in the free world. When later on the Commission established the fact that " the regime of repression in Hungary is not merely a historical incident but a continuing fact," a second booklet was published in June, 1957, containing similar documentation and the third of the series, published at The Hague in February, 1958, submits ample evidence to the judgment of world opinion and in particular to lawyers of every walk of the profession to show that the administration of criminal jurisdiction in Hungary is irreconcilable with the general principles of law recognised by civilised nations. The material in the three issues publishes the law promulgated, the accounts of arrests and trials given by the Hungarian authorities themselves, providing an incontrovertible basis of facts impervious to arguments based on political opinions.

A closer inspection of these " shortcomings " in the administration of justice in criminal trials and the other violations of fundamental human rights in order to maintain political power will contribute to our insight into the methods of government exercised by any Communist dictatorship having its philosophical roots in cynical materialism. The fate of the Hungarian people represents that of all oppressed nations living within the Russian orbit. The gallant fight of ordinary men and women in the streets of Budapest drew the attention of the world to Hungary; the administration of criminal justice as it affected the freedom fighters was accordingly the main concern of distinguished bodies of lawyers. But there is, in fact, just a difference of shade and not of colour between judicial procedure in Hungary before and after the October Revolution; or in criminal proceedings of political significance in Hungary or anywhere else behind the Iron Curtain.

The chief characteristic of this sort of procedure is a total rejection of the idea of judicial impartiality and independence. Ferenc Nezval, Hungarian Minister of Justice, said among other things in a speech at the national conference of law court presidents: " the most important task of the courts is to defend and strengthen the people's democratic State order, to pass sentence in the spirit of the class struggle—both in summary and accelerated proceedings as well as in ordinary criminal jurisdiction." He emphasised that the summary courts set up by the regime " took up the merciless struggle against the counter-revolution." In the course of a campaign against judges and prosecutors who were reluctant to carry out the wishes of the government Dr. Gyula Szenasi, Supreme Public Prosecutor, who allegedly is or should be according to Communist constitutions the " Supreme Guardian of Socialist Legality " wrote in an article: " . . . (some judges and prosecutors) try to dream of the judge's independence, of impartiality, even though awake they know only too well that such dreams do not exist . . . Our independence and impartiality in practice mean cowardly opportunism . . . " The court should be influenced by the public prosecutor, and " this is done by a bill of indictment drawn up in the spirit of the Party well substantiated by evidence and strengthened if necessary by political weight."

The Hague Conference referred to above and subsequent statements of the Commission make it clear that human rights and principles of fair trial are also violated in that the offences are defined in vague terms open to abuse in interpretation; the prosecution does not need to present a written accusation, the charge being made orally at the hearing; the accused is brought before the court without proper notice and no time and facilities are provided for him to prepare his defence, to call witnesses, or to instruct counsel; if the prosecutor is of the opinion that " the security of the State specially warrants this " the defendant must select his advocate from a list compiled by the Ministry of Justice; the " People's Chamber of the Supreme Court " has the power to sentence an accused even if acquitted by the lower court or to increase his sentence even if the prosecutor has not appealed—and this court may even re-try any case by setting aside any final judgment and pass a decision less favourable to the accused.

Little wonder that in the period covered by the three Reports, from the beginning of December, 1956, until the 31st January, 1958, Hungarian sources reported the trials of 552 people of whom only six were acquitted, but ninety-four were sentenced to death, and the execution of forty-two of the death sentences was admitted by official Hungarian statements.

It goes without saying that detention, expulsion, and " placing persons under police-control " without trial (characteristics of the regime of Rakosi, the discredited former dictator) are among the " lawful means " of the government for the " consolidation of legality." Internment, called " custody of public security " can be extended practically

* The quotations and facts mentioned in this article are taken from the reports of the International Commission of Jurists, obtainable without charge by writing to the I.C.J., 47 Buitenhof, The Hague, Netherlands.

for an indefinite term, and the Supreme Public Prosecutor reported to the Hungarian National Assembly that 1,869 persons were detained at the time of his report in an internment camp.

The members of the legal profession in Hungary, especially lawyers and professional judges, tried to uphold the great traditions of their profession. A campaign of intimidation, the dismissal of a number of judges, a " purge " among the members of the Bar in connection with the suspension of the autonomy of the Chamber of Lawyers of Budapest and Miskolc (the second largest industrial town of the country) followed and perhaps reached its climax in the trial of the Members of the Revolutionary Committee of the Budapest Chamber of Lawyers.

The statement issued by the I.C.J. regarding the recent executions points out that the timing of the announcement of these and several former executions shows that even Communist authorities appreciate and fear world opinion when directed against them. It is a particular duty of the lawyers of the free world to lead and support public opinion by keeping the issues raised in the Reports of the I.C.J. in the forefront of the discussions of their organisations and by giving them a prominent place in their publications. As Sir Hartley Shawcross put it: " Experience is tending to show that no country, however tightly insulated by an Iron Curtain from world opinion, can afford indefinitely to ignore obligations which go to the root of accepted principles of justice and international law."

A Conveyancer's Diary

THE VENDOR'S LIEN FOR UNPAID PURCHASE MONEY

A FEW years ago we all thought we knew exactly what was meant by the rule that in a contract for the sale of land time is not of the essence, and knew also how to live with this rule. Then came *Smith* v. *Hamilton* [1951] Ch. 174. We had to relearn our law, and remould our practice. Similarly, now, I imagine that we all think we know precisely what is meant by a vendor's lien for unpaid purchase money and how and when it arises. Then comes *Re Birmingham* [1958] 3 W.L.R. 10, and p. 454, *ante*. This is not nearly so important a matter as that with which *Smith* v. *Hamilton* was concerned, and no revolutionary changes in the practice of conveyancing will follow it. But I think that many will be surprised that the law is, apparently, as it is, and wonder when it took this curious turn.

The facts in *Re Birmingham* were very simple. The testatrix made her will in 1952. On the 31st March, 1953, she entered into a contract for the purchase of a house, by which the date fixed for completion was the 27th April, 1953, and paid the usual deposit. By a codicil dated the 17th April, 1953, the testatrix gave the house (after referring to the contract) to her daughter, but before the day fixed for completion she died. Did the daughter take the house subject to or free from a charge for the unpaid balance of the purchase money?

When does the lien arise?

Section 35 (1) of the Administration of Estates Act, 1925, provides that where a person dies possessed of or entitled to or under a general power of appointment disposes of an interest in property, which at the time of his death is charged with the payment of money whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not signified a contrary intention, the interest shall as between different persons claiming through the deceased be primarily liable for the payment of the charge. But it was argued on behalf of the daughter that this provision did not apply because at the date of the testatrix's death (which it was, I think, accepted by all was the relevant date for the purpose) the vendor of the property had no lien thereon for the unpaid balance of the purchase money, the day fixed for the completion of the purchase not having then arrived. Counsel for the daughter relied on a passage from the judgment of Lindley, L.J., in *Kettlewell* v. *Watson* (1884), 26 Ch. D. 501, 507, that the lien arises " whenever there is a valid contract of sale and the time for completing that contract has arrived and the purchase money is not duly paid." (Upjohn, J., pointed out in his judgment in the case under review that in *Kettlewell* v. *Watson* the purchase money had been allowed to remain unpaid even after conveyance, and expressed his view that the distinction was important. In so far as it refers to the time for completing the contract, the observation of Lindley, L.J., is thus strictly *obiter*. It is a strange thing that there is, apparently, no case in the books precisely on the question which arose in *Re Birmingham*, which must be a very common case.)

On the other side, reliance was placed on a passage from *Lysaght* v. *Edwards* (1876), 2 Ch. D. 499. This case had nothing to do with liens; the question was whether under the will of a vendor who died before completion certain real estate which he had contracted to sell passed under a gift of real estate *simpliciter* or under a gift of real estate vested in the vendor at his death as a trustee. But in his judgment Sir George Jessel, M.R., spoke of the general relation of vendor and purchaser pending completion in this way: " It appears to me that the effect of a contract for sale has been settled for more than two centuries . . . What is [the] doctrine? It is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money, a charge or lien on the estate for the security of that purchase money, and a right to retain possession of the estate until the purchase money is paid, in the absence of express contract as to the time of delivering possession . . ." On this authority, it was submitted, the vendor's charge for the unpaid balance of the purchase money having arisen the moment that the contract had been signed, s. 35 applied, and the testatrix's daughter took the property subject to a charge for the unpaid balance. This argument was accepted by Upjohn, J.

An unnecessary charge

The first thing that strikes one about this decision is that, almost certainly, it frustrated the testatrix's intention: a gift of property worth £3,500 (the purchase price in this case) subject to a charge for £3,150 is a very odd way of going about

the disposition of one's estate. But there is a more important, because more universal, aspect of the case. After the contract the vendor is entitled, according to Sir George Jessel (not that, with respect, one really needs authority for the proposition) to retain possession of the property sold until the purchase money is paid, i.e., until completion. The vendor, during this period, also retains the legal estate, if the legal estate is the subject of the purchase as in most conveyancing transactions it is. What in the world, then, does he want with a charge on the property for the unpaid purchase money—a charge to which he is entitled in equity, seemingly, on property of which he is the legal owner? Is there (or more properly, since the law seems to have been settled in the sense in which Sir George Jessel interpreted it, was there not at some stage in the past) a confusion between the position which arises when the purchase money remains unpaid pending the execution of a conveyance, and that which exists when a vendor allows the purchase money to remain owing after conveyance?

There is a passage in Ashburner's Principles of Equity (2nd ed., p. 250, in a section entitled " Equitable liens ") which supports this supposition. If (it is there stated) *A*, having agreed to sell land to *B*, conveys it to him before receiving the whole of the purchase money, *A* is entitled to a lien on the land for so much of the purchase money as remains unpaid. Lord Eldon (the passage continues) expressed an opinion that the doctrine, which goes back as far as the time of Elizabeth I, was derived from the civil law as to goods, but it can also be based on the principle that equity regards that as done which ought to have been done; *A*, having executed the consideration by conveyance of the estate, is entitled to be placed in the same situation (so far as a court of equity can place him) as if the purchase money had been paid; the court therefore gives him an equitable interest in the land to the extent of the purchase money owing to him. The authorities referred to in support of these observations are *Mackreth* v. *Symmons* (1808), 15 Ves. 329, and *Kettlewell* v. *Watson, supra*. The former of these two cases dealt with the question of notice of a lien, but at p. 339 Lord Eldon made a general statement, which seems to me to be just as valuable as the general statement of Sir George Jessel in *Lysaght* v. *Edwards*; he referred there to the principle that " a person, having got the estate of another, shall not as between them keep it, and not pay the consideration."

An appealable point

I must confess, however, that all the text-books into which I have looked other than Ashburner state the rule in the wider way in which it was stated in *Lysaght* v. *Edwards*—e.g., Snell's Principles of Equity, 23rd ed., pp. 131–2. But the absence of direct authority makes this, I think, a possible point to take in the Court of Appeal if anyone should be minded to take a chance before that court. Not only is the passage from *Lysaght* v. *Edwards* which has been cited *obiter* so far as this point is concerned, but it contains a somewhat cryptic reference to a contract " as to the time of delivering possession " which may, perhaps, make it possible to argue that, assuming the rule to be as Sir George Jessel stated it, it has no application to a contract in the usual modern form prescribing a fixed day for completion and obliging the vendor to give possession on that day. But the principle is, I think, the thing: what (to repeat myself) does a vendor want with a charge on his own property, of which he is in possession?

Meanwhile, testators who wish to dispose specifically of property which at the date of the disposition (will or codicil) they are still only under a contract to purchase should be questioned very carefully as to the content of the intended gift. Probably they usually are, and that may be the explanation of the dearth of reported cases on this point.

" A B C "

Landlord and Tenant Notebook

NAMING WRONG RESPONDENTS

THE respondents (to an application for a new tenancy, Landlord and Tenant Act, 1954, Pt. II) in *Re Nos. 55 and 57 Holmes Road, Kentish Town; Beardmore Motors, Ltd.* v. *Birch Bros. (Properties), Ltd.* [1958] 2 W.L.R. 975; *ante*, p. 419, had been the applicants' landlords for over ten years when, on 16th April, 1957, they served a notice to terminate expiring at Christmas of that year (when the lease would expire). Whether it stated that they would oppose an application for the grant of a new tenancy or not (Landlord and Tenant Act, 1954, s. 25 (6)) does not matter; but, in response to the requirement (made in accordance with s. 25 (5)) to notify the landlords within two months whether they would give up possession at the date of termination, the tenants notified their unwillingness by a notice dated 13th June, 1957.

Having done this, it was up to them to make an application for the grant of a new tenancy before 16th August, i.e., not less than two nor more than four months after the giving of the landlords' notice (s. 29 (3)), and on 30th July they took out an originating summons. But the summons made " Birch Bros., Ltd." respondents.

The explanation was that the grantors of the lease, which was dated 31st October, 1907, were a limited company named Birch Bros., Ltd. The term had been assigned to the applicants in 1932, and in 1947 Birch Bros., Ltd., had assigned the freehold to the respondents, a company formed specially for the purpose of taking over the older company's properties.

The two companies had the same registered address and the same directors and the same secretary, and it was, of course, at the registered address that service of the summons was effected.

It is not easy to guess why the applicants, having served the notice of unwillingness on the respondents, issued proceedings against Birch Bros., Ltd. (it is not suggested that they had paid rent, if any was payable, to the latter after 1947); still less easy to say why, when Birch Bros., Ltd.'s solicitors had big-heartedly told them—before 16th August—of their mistake, they took no steps to amend till 17th October. On that day the master gave them leave, on an *ex parte* application, to amend the summons by inserting " (Properties) " after " Bros." The amended summons was

then served on the respondents, and at the hearing before the master they took the point that the amendment ought not to have been allowed, whereupon the summons was adjourned.

Misdescription ; misnomer

An argument that the case was one of misdescription or misnomer failed. Harman, J., drew a distinction between circumstances in which, by a slip of the pen, a word is left out and the wrong name given (the identity remaining the same) and circumstances in which the wrong person is sued ; it could not be that when they used the one title they had intended to use the other.

It seems that the fact that the applicants knew that there was such a company as Birch Bros., Ltd., was an essential consideration. " The applicants knew that there were two such companies ; they also knew that Birch Bros. (Properties), Ltd., were their landlords, but they chose to sue Birch Bros., Ltd. . . . They simply gave the name of an existing company which they knew, and knew as not being their landlords, as respondents to the summons. . . . I can only assume that they intended to sue Birch Bros., Ltd., of whom they knew and who, indeed, were the original freeholders of this property, when they issued the summons in the way they did."

The above, of course, disposed of the misnomer point ; but it leaves us in some doubt as to what the position would be if (i) there were no such company as the one named, or (ii) the applicants had never heard of the company named. It will be remembered that, in the special circumstances of the case, the process server made the same movements as he would have made if the name of the respondents had been Birch Bros. (Properties), Ltd.

Rules of court

Rather more complex was the question whether amendment could be made by virtue of Rules of the Supreme Court. The applicants, faced with the fact that Ord. 53D requires that the landlord (as defined in the Landlord and Tenant Act, 1954, s. 44) be made respondent, invoked the Judicature Act, 1925, s. 99 (1), under which rules are made and then R.S.C., Ord. 70, r. 1, by which non-compliance is not to render proceedings void unless the court so directs, but " such proceedings may be set aside . . . or amended, or otherwise dealt with in such manner and upon such terms as the court . . . shall think fit." So far, so good ; but the " may " proved to be the stumbling-block. For the discretion has never been exercised so as to divest a vested right. And " by 16th August, 1957, Birch Bros. (Properties), Ltd., could have said : ' We have got through the four months since we served our notice, and although the tenants served a counter-notice, they have not taken any proceedings against us. We are therefore free.' . . . They were entitled, as it seems to me, to congratulate themselves and consider themselves free of that worry."

No ante-dating

But that was not all. Drawing an analogy between the position with which he was dealing and the position dealt with by Ord. 16, r. 11, which concerns misjoinder or non-joinder, Harman, J., held that, if he did allow Birch Bros. (Properties), Ltd., to be added, it would be futile : they would be treated as parties only as from the day on which the amendment was made, which was too late. The rule, in fact, provides that the names of parties may be added and " every party whose name is added as defendant shall be served with a writ of summons or notice . . . and the proceedings against such party shall be deemed to have *begun* only on the service of such writ or notice."

No appearance

The principles applied in *Beardmore Motors, Ltd.* v. *Birch Bros. (Properties), Ltd.*, were not principles peculiar to that branch of the law with which this Notebook is concerned ; but in the course of his judgment, the learned judge made some comment on the provisions of R.S.C., Ord. 53D, which may be said to invite respectful counter-comment. " Rule 5 provides that no appearance need be entered to the summons. I think it unfortunate for everybody that it was seen fit by the rules committee to provide that in this kind of application no appearance need be entered. Why they should make such a rule in matters which are highly controversial, and which, if I may say so, would be more suitable to proceedings by writ, I am quite unable to understand," and the learned judge pointed out that, if appearance were necessary, the issue would have been decided by Birch Bros., Ltd., appearing and taking the point that they were not the landlords or by Birch Bros. (Properties), Ltd., appearing under protest and moving to set aside the proceedings.

That such would have been the result cannot be disputed, but (apart from the observation that a writ seems more appropriate in a case in which some wrong is alleged to have been done) the comment appears to overlook the fact that many, if not most, applications under the Landlord and Tenant Act, 1954, s. 29, are made in county courts, which have functioned and do function satisfactorily without requiring the entry of an appearance ; and s. 63 (3) and (4) provide for transfer from one court to the other or the other to the one by agreement. It may be that the Supreme Court Rules Committee, when amending the R.S.C., 1883, by adding Ord. 53D, considered that some uniformity was desirable ; and, of course, it never occurred to the Lord Chancellor's Rule Committee appointed under the County Courts Act, 1934, when drafting Ord. 40, r. 8 (1), and Form 335, to provide for entry of an appearance, though the respondent is to file an answer (Form 336) within eight days. The last-mentioned provision might, at first sight, be said to provide support for the argument in favour of requiring entry of appearance ; for, looking at Form 336, one does find that respondents in the position of the company first served in *Beardmore Motors, Ltd.* v. *Birch Bros. (Properties), Ltd.*, would not have found it possible to comply with Ord. 40, r. 8 (2), by filing an answer in that form. But their remedy would, I submit, be to apply, under Ord. 15, r. 1 (*b*), to be struck out ; by Ord. 49, " defendant," the word used in Ord. 15, r. 1 (*b*), includes " respondent."

R. B.

PREVENTION OF FRAUD (INVESTMENT) ACT, 1939

The 1958 edition of the annual publication " Prevention of Fraud (Investment)," giving particulars of persons and firms authorised to carry on the business of dealing in securities as at 31st January, 1958, has been published by H.M. Stationery Office (price 3s. net).

The publication gives the names and addresses of holders of principals' licences, members of recognised stock exchanges and of recognised associations of dealers in securities, and exempted dealers. It also gives particulars of authorised unit trust schemes.

HERE AND THERE

INCONVENIENCE IN CONVENIENCE

ONCE when somebody told a supposedly humorous story to Hilaire Belloc, he commented savagely: "It's not malicious; it's not blasphemous; it's not obscene. I don't see what there is funny about it." And that illustrates the difficulty of making a good joke anywhere except on the broadest of music-hall stages or in reliably intimate private gatherings. It also explains why a prudent wariness, if not a natural delicacy, keeps one at arm's length from certain themes all too fertile in gravity-removing possibilities—at the right time and place. For that reason, *Sayers* v. *Harlow Urban District Council* [1958] 1 W.L.R. 623; *ante*, p. 419, found its way into the formality of the "Notes of Cases" before stepping rather hesitantly into this column and, even then, only on the express encouragement of a correspondent in Belfast who, signing himself "Penny Wise," reports a discussion with his wife as to the proper course for a lady or gentleman to adopt when locked inadvertently in a public lavatory. With the practical directness of a woman in the face of an emergency, she was of opinion that she would have acted as the plaintiff did, experimenting in the chances of climbing out. With feminine contempt for the more theoretical masculine approach, she added that her husband, no doubt, would have sat down and drafted a case for counsel to advise.

ESCAPE STORY

IT is not surprising that the learned judges of the Court of Appeal, who awarded the plaintiff damages for the injury which she sustained in reconnoitring the possibilities of a means of escape, but nevertheless found her partly to blame, should not have made any specific pronouncement on what would have been her proper legal course to pursue judged by the standard of the reasonable man or woman in the Clapham lavatory. All books of etiquette are silent on this important and embarrassing subject, nor, strangely enough, is much practical help to be gleaned from the escape stories which have lately burst out so plentifully all over literature and the cinematograph. Tunnelling in the manner of the Count of Monte Cristo was not a practical solution. Even cutting out a door panel, as in "Un Homme s'Echappe," would still hardly have enabled her to catch the bus which she was afraid of missing. Theoretically there was open to her the traditional resort of marooned persons to put a message in a bottle and commit it (if of moderate size) to the waters, but nothing guaranteed a timely reply. A distress rocket (had she happened to have one about her among the multifarious objects which women carry) would almost certainly have attracted immediate attention if fired through the window. Perhaps this episode may encourage some enterprising manufacturer to produce a set of miniature lipstick-sized rockets neatly fitting into a lady's handbag and suitable for use in such an emergency. Anyhow, as Lord Justice Morris felicitously expressed it in his judgment: "Those who are responsible for the unjustifiable detention can hardly, with good grace or with sound reason, be entitled to be astute in offering criticism of the action of their unfortunate victim." Almost, one might suggest, what Admiralty lawyers discussing collisions at sea call (I believe) the "agony of the moment" rule could have been invoked in her favour, especially as (one gathers from the report of the argument in *The Times*) the fear of irritating her waiting husband by missing the bus for the Bird Show at Olympia was rather incongruously mixed with a consciousness that delay would spell death to two tropical fishes which were to travel with them and which in fact perished.

FRENCH ADVENTURE

IT has been truly said, though the defendants did not plead it in this case, that an inconvenience is only an adventure wrongly considered. But if that is not sufficient consolation for the lady, she may reflect that it is not certain that the adventure, or the inconvenience, would not have been even more sensational in France. When I was a small child (in many ways a far primmer time than now) a similar accident befell a highly respectable French lady of our acquaintance at a small provincial railway station. It was evening. The door would not open. It was a long time before her calls attracted the attention of the station master who alone remained on duty. With furious French reasonableness at the stupidity of the traveller he flung the door open, refused to listen to the complaint of its defectiveness, banged it shut again to demonstrate its perfect working and then found that, indeed, it would not open from the inside. They had to wait and shout together for a long time before someone came on duty and released them. It would have made a very good case, especially in a French court, if the lady had not been too embarrassed to bring an action.

RICHARD ROE

"THE SOLICITORS' JOURNAL," 26th JUNE, 1858

ON the 26th June, 1858, THE SOLICITORS' JOURNAL said: "The systematic exclusion from commissions of the peace of solicitors of capacity and reputation has often been insisted upon . . . as one of the most prominent grievances under which the profession suffered. The antecedent probability that such men would make good magistrates was so strong, and the evidence of their qualifications for the office was so indisputable, that it seemed a strange blindness and perversity in successive holders of the Great Seal to deny all recognition of their just claims. We are happy to observe that the present Government has taken the earliest opportunity . . . of establishing a character for enlightened liberality and superiority to ancient prejudice. We have frequently insisted upon the importance to society of the duties confided to solicitors, and upon the expediency of enhancing in public estimation the character of a body of men employed in the most delicate and difficult affairs of life. To exclude a solicitor, on account of his profession, from an honourable office for which his education and habits of mind rendered him peculiarly fit, was, in effect, to brand the members of the profession as incapable of administering impartial justice. This was only one instance among many of that curious inconsistency by which men who trust the individual solicitor with their dearest private interests, profess and act upon the opinion that the body of solicitors are insensible of public duty, and deserve, in general, to be viewed with suspicion and hostility by all other classes. But although the broad rule of many successive Governments, that solicitors were unfit to become magistrates, would probably be approved by that large portion of Englishmen who are bound by the trammels of long-standing prejudices, the wisdom of the exclusion was perpetually impugned by the selection of solicitors for mayors of the towns in which they practised."

TALKING "SHOP"

June, 1958.

WRITING here in May, 1957, I suggested that the system of conventional legal shorthand, which has provided us with such conveniences as implied covenants for title and the Statutory Will Forms, could well be exploited and adapted to present-day requirements; and that " a long and useful list of common form precedents could be sanctioned . . . to the relief of conveyancers and their clerks and typists, whose time would be better devoted to the 'substance of the transaction' than to servile imitation of the same standard forms over and over again."

Of these—as will appear, not so original—remarks I have lately been reminded by Mr. T. B. F. Ruoff's interesting letter about " Standard Lease Clauses," which appeared at p. 343 of the June issue of the *Law Society's Gazette*. (Mr. Ruoff will be well known to some readers as a prolific writer on the theory of land registration. He is better known to some clients of mine as a kind of *deus ex machina*, who to their great advantage brought his exceptional knowledge of that subject to bear upon their intractable problems of title.)

Now Mr. Ruoff has called attention to the Act 8 & 9 Vic. cap. 124, otherwise known as the Leases Act, 1845. You will find this Act printed at pp. 863–867 of Halsbury's Statutes, 2nd ed., vol. 13. It is sandwiched between two familiar Acts, the Small Tenements Recovery Act, 1838, and the Apportionment Act, 1870, and seeing that most of us must have turned over these pages at one time or another, it is strange that (as I suspect) few of us have ever heard of it. Halsbury's footnote says that " no appreciable use appears to have been made of this Act and reference is not made to it in the leading text-books." Mr. Ruoff attributes this state of affairs, not to the ignorance, but to the conservatism of conveyancers, saying that " 113 years ago Parliament passed an Act to enable them to adopt standard clauses in leases, yet no living person has ever seen a lease so drawn." He adds: " Or have they? " I can only repeat the question.

The Act contains eight short sections and two Schedules and is admirably simple and brief. Very broadly, it provides that if you care to adopt in a deed (not, by the way, in leases only) the statutory " shorthand " in col. 1 of Sched. II, this is to be transmuted into the statutory " longhand " of col. 2. You may so " adopt " the Act either by using the formula set out in Sched. I or by stating that your deed is made in pursuance of the Act; since there is nothing very original in the scheduled formula except a reference to the Act itself, it seems to come to much the same thing, but the formula is in the old language of indentures and the second method is therefore to be preferred.

Certain directions as to the use of the forms are set out in Sched. II and these allow some (though not perhaps in terms sufficient) liberty of variation. For example, the names of the parties may be changed around (thus, say, converting a lessee's covenant for repair into a lessor's covenant); genders and numbers may be altered; blanks, such as years specified for painting, may be (and one might add, must be) filled in; and " exceptions " and " qualifications " may be introduced. All these changes are then to be read into the longhand.

I suspect that the gilding of the lily by these directions has contributed to the failure of the Act as a practical measure of reform. It could hardly be supposed—at least in these days—that it is not open to the parties to modify, alter *or extend* the provisions in any way that they please; yet if the directions are literally construed according to the principle of *expressio unius* it could be suggested that any departure from them leaves the parties suspended, as it were, between the shorthand and the longhand—on a sort of non-statutory limb. This was probably quite enough to put our forefathers off; in these days when the court may be relied upon to look at the substance of the transaction could we not afford to be bolder?

On a count it will be found that the shorthand of col. 1 of Sched. II adds up to 137 words and the longhand of col. 2 to 1,043 or thereabouts. Probably the simple language of col. 1 was too far ahead of its time, and this further explains why this useful Act has been buried away and forgotten. True, s. 3 provides—with more than a century's prescience—that " in taxing any bill for preparing and executing any deed under this Act, it shall be lawful for the taxing master, *and he is hereby required*, in estimating the proper sum to be charged for such transaction, to consider *not the length of such deed* but only the skill and labour employed, and responsibility incurred, in the preparation thereof." But I daresay our forbears thought that you could tell that to the marines—or, even worse, to the lessor against whom the charge was made, or to the lessee who by custom had to pay it—but with little prospect of persuading them or the taxing master that the statutory shorthand, in all its naked simplicity, reflected " skill and labour " and " responsibility " in a degree matching its elegant verbose counterpart in col. 2. That, I suspect, was the cynical—but may we even now safely assert, wholly unsound?—professional view in 1845.

We have moved on a little since then (though not half far enough, in all conscience). The question is whether—in default of a better and more modern version, and what prospect is there of that?—this Act could not be employed to advantage in 1958. True, some of the longhand is by modern standards a trifle prolix, the references to executors, administrators and assigns are now mostly unnecessary, and provision is made here and there for obsolete matters such as tithe rent-charge in Ireland, but the fabric as a whole is as sound as ever it was; indeed, some of the drafting compares most favourably with the rubbish that one sees in leases nowadays. And most leases are now charged at scale fees, so we have no need to fear that we shall lose money by cutting down on verbiage. Moreover, there is usually so much else to go into the document that (as with the Statutory Will Forms) time saved on the swings may be expended on the more difficult roundabouts.

Adapting the Act to contemporary requirements should not present much difficulty. But there is the problem of fitting together those covenants for which the Act provides and other covenants which are outside the scope of it. One possible method is to group the statutory provisions together in one part of the lease and the extra-statutory provisions in another. But this would entail a departure from the conventional sequence of clauses in a lease. As a result of this grouping the proviso for re-entry could appear about the middle of the document, and this would not be congenial to purists. There is much to be said for adhering to conventional sequence, so probably the better method is to bring the statutory provisions into the lease in their proper place, suitably labelled as such.

On this system a lease could be drawn more or less as follows :—

THIS LEASE made the day of 1958 BETWEEN *A B* of (hereinafter called " the Lessor ") of the one part and *C D* of (hereinafter called " the Lessee ") of the other part

WITNESSETH AS FOLLOWS :—

1. [Demise].

2. IN this Lease (which is hereby expressed to be made in pursuance of the Leases Act 1845) where any covenant condition or proviso is expressed to be by reference to the statute it shall take effect as though it had been expressed to be made in pursuance of the said Act but with such changes of text (if any) as may herein appear and in case of any conflict between the provisions of the said Act and the express provisions of this Lease the latter shall prevail.

3. THE Lessee covenants with the Lessor *by reference to the statute* as follows :—

(1) To pay rent
(2) To pay taxes
(3) To repair
(4) To paint outside every fourth year and to paint and paper inside every seventh year
(5) To insure from fire in the joint names of the Lessor and the Lessee ; to show receipts ; and to rebuild in case of fire
(6) That he will leave premises in good repair
(7) And that the Lessor may enter and view state of repair and that the Lessee will repair according to notice.

4. [Enter such positive covenants by the Lessee as are *not* by reference to the statute.]

5. THE Lessee further covenants with the Lessor as follows :—

[(1) to say (10) : negative covenants not by reference to the statute]

(11) *By reference to the statute* that he will not use the premises as a shop

(12) *By reference to the statute* that he will not assign without leave [add underletting if desired].

6. THE Lessor covenants with the Lessee *by reference to the statute* for quiet enjoyment.

7. PROVISO *by reference to the statute* for re-entry by the Lessor on non-payment of rent or non-performance of covenants.

IN WITNESS etc.

Something on these lines should prove workable, but for the expanded meaning of the statutory shorthand reference must be made to col. 2 of Sched. II, for it is too long to be reproduced here. One example must suffice. The covenant " to repair " is to be construed as follows :—

> " And also will during the said term well and sufficiently repair, maintain, pave, empty, cleanse, amend and keep the said demised premises, with the appurtenances in good and substantial repair, together with all chimney pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pails, rails, locks and keys and all other fixtures and things which at any time during the said term shall be erected and made, when, where and so often as need shall be."

Perhaps, in view of my severe comments on changes of tense in lessees' covenants at p. 27, *ante*, I should add that the change from the infinitive which occurs at the end of cl. 3 (5) of my skeleton form is prescribed by Sched. II, col. 1, to the Act.

" ESCROW "

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the " Points in Practice " Department, " The Solicitors' Journal," Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, but the following points should be noted :

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Decontrol—TRANSITIONAL PROVISIONS—NOTICE TO CALL IN MORTGAGE

Q. *A* is the mortgagee of a dwelling-house of which the gross value for rating is £52 and the rateable value £42. *A* wishes to call in the mortgage. Can he give notice now to call in the mortgage after 6th October, 1958, or must he wait until after 6th October, 1958, before giving notice ?

A. *A* must wait until after 6th October, 1958, before giving notice to call in the mortgage. By para. 12 of Sched. IV to the Rent Act, 1957, the mortgage provisions of the Rent Acts are to apply for fifteen months after decontrol. By s. 7 of the Increase of Rent, etc. (Restrictions) Act, 1920, while the Acts apply it is not " lawful " for a mortgagee to call in his mortgage. If, therefore, any notice is served before 6th October, 1958, it will be void. Attention should also be paid to the effect of cl. 4 (3) of the Landlord and Tenant (Temporary Provisions) Bill (which has not yet received the Royal Assent), which will extend mortgage restrictions while the Act applies to dwelling-houses.

Improvement Grant—EFFECT ON RENT

Q. We have a client who is the owner of a semi-detached house and who would like to take advantage of an improvement grant under the Housing Act, 1949. The rating valuation for November, 1956, and now, is gross £41 and rateable £31, and the house was at all material times occupied by a tenant under a tenancy protected by the Rent Acts. The tenant was given notice by our client in November, 1957, and quit the property in February, 1958. A new tenant is now in occupation under a three-year tenancy at a rent of £100 a year exclusive of rates, and the new tenant is bound to keep the interior in repair and paint the outside once every three years. Our client, with the agreement of the tenant, proposes to make improvements (including the provision of a bathroom and a proper hot water system) at a cost of £300, on which it is thought an improvement grant of £150 can be obtained. Do you agree that if a grant is accepted and received, under the provisions of the Rent Act, 1957, there will be a condition for the next twenty years that the rent shall not exceed what the rent limit would be if the property were controlled and that such controlled rent will be based on the gross value multiplied by the appropriate factor (presumably something less than two times), plus 8 per cent. of the cost of improvements, less the amount of the grant ? We have in mind that such a controlled rent would be something less than the £100 a year contractual rent.

A. We agree that by s. 23 of the Housing Act, 1949, as amended by the Rent Act, 1957 (para. 14 of Sched. VI), the rent for twenty years after the improvements have been carried out must not exceed the limit imposed by s. 20 of the 1957 Act, i.e., the amount of the rent limit as ascertained under s. 1 of the Act. That rent limit will be the gross value times the appropriate factor (which, as you say, will be something less than 2 as the tenant is responsible for some repairs) plus 8 per cent. per annum of the amount expended by the landlord on the improvements (s. 5 (1)). That figure would, on the facts, be less than £94 (i.e., $£41 \times 2 + \frac{£150 \times 8}{100}$).

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

INCOME TAX: OPERATION OF TOTALISATOR ON RACECOURSES: RACECOURSE BETTING CONTROL BOARD: CARRYING ON TRADE: WHETHER DEDUCTIBLE EXPENSES

Racecourse Betting Control Board *v.* Young (Inspector of Taxes)

Same *v.* Inland Revenue Commissioners

Young (Inspector of Taxes) *v.* Racecourse Betting Control Board

Inland Revenue Commissioners *v.* Same

Lord Evershed, M.R., Morris and Ormerod, L.JJ. 7th May, 1958

Appeal from Upjohn, J. ([1958] 1 W.L.R. 122; *ante*, p. 85).

The Racecourse Betting Control Board was a corporation set up under the Racecourse Betting Act, 1928, to operate a totalisator on approved racecourses. The board established the totalisator fund pursuant to s. 3 (4) of the Act from a percentage of the moneys staked on the totalisator. Under s. 3 (6) the board applied this fund in accordance with schemes prepared by them and approved by the Secretary of State for purposes conducive to the "improvement of breeds of horses or the sport of horse racing" but subject to the payment thereout of "all taxes, rates, charges, and working expenses," and "the retention of . . . any sums . . . to meet contingencies . . ." For the year ending 31st December, 1953, the board authorised the following expenditure: (1) to racecourse executives from the racecourse fund, £230,977, which was divided among the racecourses approximately in proportion to the cost of maintenance of each racecourse as a fraction of the total cost of maintaining all racecourses, and was normally used for improvement to the racecourse itself; (2) to owners and trainers in reduction of the cost of travelling racehorses to race meetings, £168,555; (3) runners' allowance, attributable to 1954, £3,087, a sum of £1 per runner being paid as an additional allowance to owners of horses who ran their horses in any race; (4) towards the administrative expenses of the Jockey Club and National Hunt Committee and the cost of the race finish recording camera, £62,050; (5) amount paid for assistance of point-to-point meetings, £24,233; (6) for the assistance of racing under the rules of the Pony Turf Club, £1,975. All the items except (3) were included in schemes under s. 3 (6) of the Act, item (3) being included in the board's working expenses. It was conceded that the board was carrying on the trade of totalisator operator. Upjohn, J., held, overruling the Special Commissioners, that items (1) to (6) were not deductible as expenses laid out for the purposes of the board's trade as such totalisator operator within the meaning of s. 137 (*a*) of the Income Tax Act, 1952. The board appealed. *Cur. adv. vult.*

Lord Evershed, M.R., said that the two questions for the court might be formulated as follows: first, what was the scope of the board's business and what were its powers? Put more precisely, what was the scope of the phrase "working expenses" in s. 3 (6), and what otherwise was the effect of that subsection? Secondly, and in the light of the answer to the first question, was the finding of the Special Commissioners conclusive, and, if it was not conclusive, was it right? As to the first question, in his judgment the business of the board was the operation of totalisators and not the promoting, as such, of the improvement of breeds of horses, and the like. He thought that in s. 3 (6) of the Act of 1928, the phrase "working expenses" covered expenses incurred reasonably and properly in the working (that was the setting up, keeping and operating) of totalisators upon approved racecourses; but that the phrase was not limited to such expenditure as was wholly and exclusively laid out for the purposes of the board's business within s. 137 (*a*) of the Income Tax Act, 1952; and that the purposes which Parliament designated in s. 3 (6) of the Act of 1928 as the purposes for which the board could apply the surplus of the totalisator fund were distinct from the business purposes of the board, although the board had selected those purposes for the application of such surplus as were most calculated to promote its own business interests. The result therefore, in his judgment, was that Upjohn, J., was right in saying that the findings in this case were, upon their face, open to question, and ought not to be regarded as sacrosanct. In the circumstances, he (his lordship) was of the opinion that all the items, including the runners' allowance, failed to qualify as deductions for income tax purposes, since in his judgment they were laid out for purposes not exclusive to the board's trade as a totalisator operator. He would dismiss the appeal.

Morris and Ormerod, L.JJ., agreed. Appeal dismissed. Leave to appeal granted.

Appearances: *Heyworth Talbot*, Q.C., and *Desmond Miller* (*Simmons & Simmons*); *F. N. Bucher*, Q.C., *Alan Orr* and *H. H. Monroe* (*Solicitor of Inland Revenue*).

[Reported by J. A. Griffiths, Esq., Barrister-at-Law] **[1 W.L.R. 705**

STAMP DUTY: SETTLEMENT: ORAL AGREEMENT FOR VALUE FOR TRANSFER OF REVERSIONARY INTEREST TO TENANT FOR LIFE: SUBSEQUENT DEED OF TRANSFER: WHETHER ORAL AGREEMENT EFFECTIVE TO PASS EQUITABLE REVERSIONARY INTEREST

Oughtred *v.* Inland Revenue Commissioners

Lord Evershed, M.R., Morris and Ormerod, L.JJ. 15th May, 1958

Appeal from Upjohn, J. ([1958] Ch. 383; *ante*, p. 85).

Under and by virtue of a settlement dated 1st January, 1924, an appointment dated 18th June, 1956, and a release of the same date, the respondent was the tenant for life of 100,000 preference shares and 100,000 ordinary shares in a company, and her son, *P*, was absolutely entitled to the shares subject to her life interest. By an oral agreement made on 18th June, 1956, it was agreed between the respondent and *P* that *P*, on 26th June, would exchange his interest under the settlement and subsequent deeds for certain shares in the same company then owned by the respondent to the intent that her life interest in the shares subject to the settlement should be enlarged into absolute ownership thereof. On 26th June, by a deed of release between the respondent, *P* and the trustees, the respondent and *P* gave release to the trustees. The deed recited the oral agreement and that the trust fund, consisting of the shares, "is accordingly now held in trust for [the respondent] absolutely," and that it was intended to transfer them to the respondent, such transfer being the consideration for the release. On the same day, by a deed made between the respondent, *P* and the trustees, the trust fund of 100,000 preference shares and 100,000 ordinary shares was transferred to the respondent in consideration of 10s. Upjohn, J., held, reversing the commissioners, that the transfer was not assessable to *ad valorem* duty. The Crown appealed. *Cur. adv. vult.*

Lord Evershed, M.R., delivering the judgment of the court, said that there was no evidence or finding as to the order in which

the deed of release and the two transfers of 26th June, 1956, were in fact executed, and in their judgment they should be regarded as having been executed contemporaneously. In the Court of Appeal the case for the Crown had been put alternatively. In the first place, it was said that since, immediately before the execution of the transfer on 26th June, *P's* equitable reversionary interest remained in him, and since by the effect of the transfer the respondent acquired a full legal and beneficial title to the shares, therefore the transfer must have operated both to assign the respondent *P's* reversionary interest and also the legal estate. On this view, which the Special Commissioners accepted, the transfer should be stamped, both *ad valorem* in respect of the former property and with 10s. in respect of the legal estate. Alternatively, it was contended that the transfer, read in the light of the contemporary transfer of the other shares to *P's* nominees, and of the deed of release, was in truth nothing other than the completion and the contemplated method of completion of the oral contract, and so was a " conveyance or transfer on sale of property " within the meaning of s. 54 of and Sched. I to the Stamp Act, 1891. The Crown's former alternative was, in their lordships' judgment, faced with the formidable objection that, if the transfer operated as an assignment of *P's* interest as a distinct item of property (as must follow from the Crown's claim to the additional 10s. duty), then how was it achieved in the absence of *P* as a conveying party? The court had found difficulty in appreciating the answer to this objection, but it was, in the event, unnecessary for them to express a view upon it, for they had come to the conclusion that the Crown was entitled to succeed upon the second alternative, though the result was to diminish the amount of duty leviable by the item of 10s. It was undoubtedly true that stamp duty was leviable upon instruments and not upon transactions. But it was equally clear that the court was not thereby debarred from inquiring what was the true nature and intended purpose of the instrument sought to be charged. The distinction between the two alternative presentations of the Crown's case might be a fine one, but it was real. It was of the essence of the former alternative that the transfer operated to convey two separate and distinct " properties," viz., the legal estate and *P's* reversionary equitable interest, the Crown claiming duty in respect of each " conveyance." Though the vendor under the contract need not be a conveying party, the latter must, as they conceived, be in a position to convey the property alleged to pass. The second alternative treated the three documents of 26th June (being the date fixed by the contract for completion) as contemporaneous, and deduced—particularly from the terms of the release—that the trustees were thus enabled and entitled to transfer to the respondent (as the transfer on the face of it purported to do) the shares themselves with all rights and benefits attached thereto. For these reasons they thought that the appeal should be allowed. Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *R. O. Wilberforce*, Q.C., and *E. Blanchard Stamp* (*Solicitor, Board of Inland Revenue*); *Peter Whitworth* (*Moeran, Oughtred & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [3 W.L.R. 64

STAMP DUTY: VALIDITY OF ORAL DIRECTION TO NOMINEES OF SETTLOR TO HOLD SHARES ON TRUSTS OF VOLUNTARY SETTLEMENTS: " DISPOSITION OF SUBSISTING EQUITABLE INTEREST ": SUBSEQUENT EFFECTIVE DECLARATION OF TRUST

Grey and Another *v.* Inland Revenue Commissioners

Lord Evershed, M.R., Morris and Ormerod, L.JJ.

15th May, 1958

Appeal from Upjohn, J. ([1958] 2 W.L.R. 168; *ante*, p. 84).

In 1949, Edward William Hunter made five settlements, one in favour of each of his five grandchildren, and in 1950 he made a sixth settlement on his then existing and possible after-born grandchildren. The appellants were the trustees of each of these settlements. On 1st February, 1955, Hunter transferred to the appellants, as his nominees, 18,000 ordinary £1 shares in a company. On 18th February, 1955, Hunter orally and irrevocably directed the appellants thenceforth to hold the shares transferred to them on 1st February as to five blocks of 3,000 shares each on the trusts respectively of the five settlements executed in 1949 and as to 3,000 shares on the trusts of the settlement of 1950, to the intent that such direction should result in the entire exclusion of Hunter from all future right, title and benefit to or in the shares and the income thereof. On 25th March, 1955, the appellants executed six declarations of trust which Hunter, although not expressed to be a party thereto, executed. They were all in similar form and each recited that the appellants were the holders of 3,000 shares in the company, Hunter's oral direction of 18th February, the acceptance of the trust reposed in them by that oral direction and that the giving of the direction and its nature were testified by the execution by Hunter of the deed. The operative part of each deed declared that the appellants acknowledged and declared that they were holding the shares on the trusts of the settlement to the intent that the shares should form part of the trust fund. The six declarations of trust were assessed to *ad valorem* stamp duty as voluntary dispositions within s. 74 of the Finance (1909–10) Act, 1910, but on appeal Upjohn, J., dismissed the assessments, holding that no duty was payable because the property had already passed by the direction of 18th February. The Crown appealed.

LORD EVERSHED, M.R. (in a dissenting judgment) said that the real question was whether the oral directions of 18th February were effective to establish the trusts therein specified, since it had been conceded that if they were not the declarations of 25th March were taxable under s. 74 of the Act of 1910. Prior to the 18th February it was clear that Hunter had an equitable interest in the shares, proprietary in character, of which as such he was capable of " disposing " and a " disposition " or purported " disposition " of this subsisting interest would, by virtue of s. 53 (1) (*c*) of the Law of Property Act, 1925, be ineffective unless made in writing. A subsisting equitable interest could be disposed of (i.e., " got rid of ") even though it was not " surrendered " or assigned. In *Timpson's Executors* v. *Yerbury* [1936] 1 K.B. 645, 664, Romer, L.J., summarised the four ways in which an equitable interest in property in the hands of a trustee could be disposed of by the person entitled in favour of a third person, one being a direction to the trustees to hold for that person, but there was no judicial decision whether such a direction, though distinct in form, had the effect of or involved a " disposition " within s. 53 (1) (*c*). Judged against the general background of the characteristics of equitable interests the direction in question was distinct, in his lordship's opinion, not merely in form but in substance from an assignment. It no more was or involved a disposition of a subsisting equitable interest than would a formal declaration of trust by an absolute proprietor of personal property and, like such a declaration, could take effect without writing. The result might be to defeat or override the pre-existing beneficial rights of Hunter but that was incidental and did not cause the transaction to be a disposition or assignment of those rights. Having regard to the language of s. 9 of the Statute of Frauds, of which s. 53 (1) (*c*) purported to be a re-enactment, the word " disposition," though of wide import, should be construed so as not to cover such a transaction as the present.

MORRIS, L.J., said that although a trust of personal property could be made orally the question was whether this was a " disposition " of the equitable interest or trust subsisting in Hunter before he gave his direction. His lordship referred to *Bentley* v. *Mackay* (1851), 15 Beav. 12; *M'Fadden* v. *Jenkyns* (1842), 1 Phillips 153; *Martin* v. *Inland Revenue Commissioners* (1930), 15 A.T.C. 631; and *In re Chrimes* [1917] 1 Ch. 30, but said that there was no case directly in point. " Disposition " was a word of wide signification. The purpose of the oral direction was to deprive Hunter immediately and irrevocably of his subsisting personal beneficial interest so that others should become beneficially entitled. It was necessary that he should deal with his interest to do that, and he terminated it. In his lordship's view that was a purported " disposition " of his interest, and by virtue of s. 53 (1) (*c*) it was ineffective. The instruments of 25th March were made effective by the parties thereto and were chargeable to *ad valorem* duty.

ORMEROD, L.J., agreed. " Disposition " in s. 53 (1) (*c*) should not be restricted to " grants and assignments " as in s. 9 of the Statute of Frauds, 1677. Appeal allowed. Leave to appeal to House of Lords.

APPEARANCES: *R. O Wilberforce*, Q.C., and *E. Blanshard Stamp* (*Solicitor of Inland Revenue*); *J. H. Pennycuick*, Q.C., and *W. T. Elverston* (*Soames, Edwards & Jones*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [3 W.L.R. 45

HOUSING: DIFFERENTIAL RENT SCHEME: FAILURE OF TENANT TO INFORM COUNCIL OF INCREASE OF INCOME: TENANCY DETERMINED: LIABILITY OF TENANT FOR REBATES NOT REFUNDED

Havant and Waterloo Urban District Council *v.* Norum

Lord Evershed, M.R., Morris and Ormerod, L.JJ.
22nd May, 1958

Appeal from Portsmouth county court.

During the financial year which ended in April, 1955, the defendant was tenant of a dwelling-house owned by a local authority. Early in 1955, the local authority put into operation a differential rent scheme, and by letter dated 5th February, 1955, the clerk to the council served notice to quit on the tenant and informed him that particulars of the council's new arrangements for letting their houses were to be found in a leaflet, which was enclosed, and on the back of rent cards, also enclosed. At the same time the tenant was offered a new tenancy at a weekly rent of 34s. 5d. (later reduced to 29s. 4d.) from which there would be deducted such amounts by way of rebate as he might be entitled to under the scheme. The leaflet provided by cl. 4 that any increase or permanent decrease in gross income necessitating a re-assessment of rent was to be notified immediately by the tenant. The tenant was entitled under the scheme to the maximum rebate of 12s. a week and from April, 1955, to April, 1956, he paid a rent which was calculated on that basis. In that year, the tenant had by reason of overtime work so increased his income that he ceased to be entitled to the full rebate under the scheme and should have paid a rent increased by 10s. a week for 25 weeks. When his rent was assessed for the year beginning April, 1956, the tenant agreed with the council to pay 10s. more a week as additional rent until he had repaid to the council the rent underpaid for the past year. The rent card was altered to read "Maximum net rent 29s. 4d. plus 10s." The tenant gave up his tenancy in October, 1956, having paid the rent due to that date but before he had recouped to the council the full amount it had been calculated he had underpaid in the previous year. The council in these proceedings claimed payment of the balance of the sum they had been underpaid as rent. The county court judge dismissed the claim. The council appealed.

LORD EVERSHED, M.R., said that the effect of the arrangement of the council with the tenant was that, in lieu of any payment back by him of the excess rebates he had been allowed, he should for the ensuing year pay an additional rent of 10s. a week until he had discharged such excess rebates; there was no re-assessment of rent as contemplated by cl. 4, and since at the date of the determination of the tenancy there was then no rent in arrear, the council's claim must fail. He (his lordship) shared the county court judge's view that it would at best need extremely clear and strong language to enable a landlord *ex post facto*, and without the tenant's assent, to alter the rent or contractual sum in consideration of which the tenant was entitled to enjoy the premises; and he was not satisfied—to put it no higher—that there was in these documents any sufficient warrant for such a power. He would dismiss the appeal. Appeal dismissed.

MORRIS and ORMEROD, L.JJ., agreed.

APPEARANCES: *R. E. Megarry*, Q.C., and *A. John Jenkins* (*A. F. & R. W. Tweedie*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [1 W.L.R. 721

BUILDING CONTRACT: R.I.B.A. FORM: LIABILITY OF CONTRACTOR TO INSURE

Gold *v.* Patman & Fotheringham, Ltd.

Hodson, Romer and Sellers, L.JJ. 22nd May, 1958

Appeal from Gorman, J.

The defendants, a firm of building contractors, contracted to erect a building on a site owned by the plaintiff. The contract was in the standard R.I.B.A. form, and the schedule of conditions provided by condition 14 (*b*) that the contractor should be liable for and should indemnify the employer against any loss, liability, claim or proceedings in respect of any injury or damage whatsoever to any property, real or personal, arising out of or in the course of the execution of the works, provided that the same was due to any negligence of the contractor. By condition 15: "Without prejudice to his liability to indemnify the employer under cl. 14 hereof, the contractor shall effect . . . such insurance . . . as may be specifically required by the bills of quantities . . ." In the bills of quantities it was provided that the contractor should insure or make payments in connection with, *inter alia*, National Insurance Acts, Fatal Accidents Acts, and insurance of adjoining properties against subsidence or collapse. In carrying out piling work on the instruction of the plaintiff or his architect the defendants (admittedly without negligence) caused damage by subsidence to adjoining properties, the owners of which issued claims against the plaintiff, who brought the present action against the defendants claiming damages for breach of contract on the ground that the defendants had only covered their own liability by insurance and not also that of the plaintiff. Gorman, J., allowed the plaintiff's claim, and the defendants appealed.

HODSON, L.J., delivering the judgment of the court, said that since the earlier items mentioned in the bills of quantities would be for the contractor to cover there was no sufficient reason for thinking that when one came to the last item, "Insurance of adjoining properties against subsidence or collapse," the obligation to insure was for the first time in the list an obligation to insure, not the contractor himself, but the owner. If there were to be a change of obligation, one would expect some words used to show that there was a change, and here there were none; nor would one expect to find such an obligation in this place, having regard to the words of condition 15, where reference was made to the insurances to be effected as might be specifically required by the bill of quantities, such policies to be produced when required and not only to be approved by and deposited with the architect. Accordingly, the defendants were right in their contention that the obligation to insure adjoining properties against subsidence or collapse was for the contractor to insure himself and not the owner. Appeal allowed.

APPEARANCES: *R. Stewart-Brown*, Q.C., and *I. D. Wallace* (*Masons*); *Gerald Gardiner*, Q.C., and *F. Hallis* (*Eric H. Davis and Co.*).

[Reported by J. D. FENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 697

Queen's Bench Division

ARBITRATION: COSTS: STRING CONTRACT

L. E. Cattan Ltd. *v.* A. Michaelides & Co.

(Turkie, Third Party, George (Trading as Yarns & Fibres Co.) Fourth Party)

Diplock, J. 26th March, 1958

Motion to set aside or remit an arbitrator's award.

The sellers of certain goods sued the buyers for the balance of the price. The buyers counterclaimed against the sellers, alleging that the goods were not in accordance with their description in the contract. The sellers, while denying a breach of contract, claimed an indemnity from the persons from whom they had purchased the goods, whom they joined as third party. The third party, in turn, joined their suppliers as fourth party. The dispute was referred to arbitration. The arbitrator found that there was no substance in the buyers' counterclaim, and that, accordingly, the question of an indemnity by the third party to the sellers and by the fourth party to the third party did not arise. The arbitrator ordered the third party to pay the fourth party's costs, the sellers to pay the third party's costs, including those of the fourth party; but he ordered the buyers to pay the costs of the sellers, excluding the costs payable by the sellers in respect of the third and fourth parties. The sellers applied to have the order as to costs set aside or remitted to the arbitrator for further consideration.

DIPLOCK, J., said that, on the arbitrator's finding, the award as to costs quite clearly could not stand. It would be an injudicial exercise of discretion to award the third party's costs against the sellers, including the costs of the fourth party, and not to award to the sellers against the buyers their costs including the costs of the third and fourth party proceedings, which they had been compelled to pay. On that finding it was impossible to draw the distinction which the arbitrator had drawn between the position of the third party and the sellers as regards the costs of the further proceedings. Therefore, that part of the award which dealt with costs should be remitted to the arbitrator for his reconsideration. In the ordinary way, where damages were claimed for breach of contract on one contract in a string

of contracts, and the seller brought in his immediate seller as a third party, and that party brought in his immediate seller as a fourth party, then, provided that the contracts were the same, or substantially the same, so that the issue as to whether the goods complied with a description was the same, in the normal way the defendant if successful should recover against the plaintiffs not only his costs but any costs of the third party which he had been ordered to pay; the third party in like manner should recover from the defendant his own costs and any costs of the fourth party which he had been compelled to pay, and so on down the string. Award remitted in part.

APPEARANCES: *C. R. Beddington* (*Birkbeck, Julius, Coburn and Broad*, for *A. L. Hamwee & Co.*, Manchester); *Peter Pain* (*Simmons & Simmons* for *March, Pearson & Green*, Manchester); *C. L. Hawser* (*Barrow-Sicree & Co.*, Manchester); *R. T. Monier-Williams* (*Sando, Parrott & Co.*, for *Kirk, Jackson & Co.*, Manchester).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 717

NATIONAL INSURANCE: JURISDICTION OF MEDICAL APPEAL TRIBUNAL: FRESH EVIDENCE

R. v. Medical Appeal Tribunal (North Midland Region); ex parte Hubble

Lord Goddard, C.J., Cassels and Diplock, JJ.

16th May, 1958

Applications for orders of certiorari.

The claimant sustained an injury to his back on 14th July, 1955, arising out of and in the course of his employment, and a medical board made a final assessment of the extent of his disability at 5 per cent. for life from 13th May, 1957. The claimant appealed against the amount of the assessment to the medical appeal tribunal under s. 39 (2) of the National Insurance (Industrial Injuries) Act, 1946. There was no reference to the tribunal by the insurance officer on behalf of the Minister under s. 39 (3) of the Act of 1946, and the only contention before the tribunal was that the award was too small. By their decision of 15th July, 1957, the tribunal set aside the award of the medical board finding that any loss of faculty that may have been received was due to an aggravation of a pre-existing condition and that the aggravation had ceased by 12th May, 1957. Subsequently, on 2nd August, 1957, the claimant had a further examination by his surgeon, who in his report stated that an operation which the claimant had undergone on 5th July, 1957, disclosed the presence of a disc injury. On the basis of this report the claimant asked for a review of his case under s. 40 (1) of the Act of 1946. The reviewing medical board made a provisional assessment of 10 per cent. from 13th May, 1957, until 16th June, 1957, and of 100 per cent. from 17th June, 1957, until 17th October, 1957. The decision of the reviewing medical board was referred by the Minister to the medical appeal tribunal under s. 39 (3) of the Act of 1946. By their decision of 28th October, 1957, the tribunal set aside the medical board's assessments, finding that the further report of the surgeon was not " fresh evidence " within s. 40 (1) of the Act of 1946. The claimant applied for orders of certiorari to quash both decisions.

DIPLOCK, J., delivering the judgment of the court, said that the effect of s. 39 (2) and (3) was to substitute in the cases to which they applied another and presumably more highly qualified expert investigating body for the medical board, and there were no grounds for holding that their function was any different from that of the medical board, namely, to use their own expertise to reach their own expert conclusions on the matters of medical fact and opinion involved in " the case " of the claimant. As there was no *lis inter partes* in the determination of the medical appeal tribunal there were no grounds for limiting the unfettered powers conferred on them by the terms of the Act to determine disablement questions when the case was referred to them under s. 39 (2) by applying rules of practice adopted by appellate courts in ordinary litigation between adverse parties to an inquiry or investigation to which such litigation bore no true analogy. The application for certiorari in respect of the decision of 15th July, 1957, was accordingly dismissed. As to the second decision, for a decision to be reviewed under s. 40 (1) of the Act two conditions must be fulfilled: first, the board or the tribunal must be satisfied that the decision to be reviewed was given in consequence of the non-disclosure or misrepresentation of the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent), and secondly, the board or tribunal must be so satisfied by fresh evidence. As regards the first condition, counsel for the claimant submitted that it was fulfilled if there was any omission by the claimant or any other person to put before the board or tribunal any material fact, whether known to the claimant or such other person at the time of the hearing of the decision under review or not. As regards the second condition, he contended that " fresh evidence " simply meant further evidence whether it was or could with reasonable diligence have been available at the time of the original hearing or not. The court were of opinion that both submissions were wrong. There could be no non-disclosure of a fact which was not known. It did not appear from the material before the court whether there were any material facts relating to the operation which were known to the claimant at the time of the hearing of 15th July and were not disclosed to the tribunal then. The statute required the tribunal to be satisfied not by " further evidence," but by " fresh evidence," an expression used in analogous circumstances in the Summary Jurisdiction (Married Women) Act, 1895, which had been the subject of well-established and consistent judicial interpretation. The court could not do better than adopt the words of Sir Henry Jeune, P., in *Johnson* v. *Johnson* [1900] P. 19, 21. In the context of the present subsection it would be monstrous to suppose that a party could fail to disclose or misrepresent (even fraudulently) a material fact known to him and could thereafter proceed to make application upon application for a review based on successive corrections of non-disclosures or misrepresentations of which he was guilty in the first instance. The application for certiorari in respect of the decision of 28th October, 1957, was therefore dismissed. Applications dismissed.

APPEARANCES: *F. W. Beney*, Q.C., and *H. S. Ruttle* (*Taylor, Jelf & Co.*, for *Hopkin & Sons*, Nottingham); *Rodger Winn* (*Solicitor, Ministry of Pensions and National Insurance*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 24

SHIPPING: DEMURRAGE: WEATHER WORKING DAYS: BORE TIDES

Compania Crystal de Vapores of Panama *v.* Herman & Mohatta (India), Ltd.

Devlin, J. 20th May, 1958

Special case stated by an umpire.

By a clause in a charterparty it was provided: " Cargo to be loaded and stowed free of expense to the ship at the average rate of 400 tons per weather working day." The vessel in question, after its arrival in Calcutta, the port of loading, was ordered by the harbour master to move from its berth, because he thought that it could become a danger during the bore tides if it remained there. The vessel did not return to the berth until six days later, during which time loading was discontinued. The question of law for the decision of the court was whether the time thus lost in loading was to be included in the assessment of lay time.

DEVLIN, J., said that the expression " weather working days " could not be construed so widely as to cover the circumstances of this case. It must be assumed that the expression was used in relation to a berth or in relation to a situation in which the parties presupposed a safe berth: it was assumed that the vessel would be in a safe berth and it was contemplated that, notwithstanding the safety of the berth, the weather might interfere with the actual work of loading. The result was, therefore, that there being nothing in the charterparty which gave the charterers an express exception to the lay time clause, they must show that failure to load within the lay time arose through the fault of the shipowner or those for whom he was responsible. Counsel for the shipowners submitted that if the vessel was removed from the berth because it was reasonably necessary for her safety that she should be removed, even if that was the voluntary act of the shipowner, it was not the fault of the shipowner and consequently it did not prevent the lay time from continuing to run. The mere fact that the shipowner had by some act of his prevented the discharge was not enough to interrupt the running of the lay days; it was necessary for the charterers also to show that there was some fault on the part of the shipowner and, if the act of removal by the shipowner or the intervention with the lay days was caused by something that was beyond his control and not his fault, then the lay time was not

interrupted. Therefore, counsel was right in his submission that, even assuming the act of the shipowner to be a voluntary act, it did not interrupt the running of the lay time. The remaining point which arose was whether, having regard to the fact that the ship was moved by the order of the harbour master, it could be said that the loading was prevented by illegality, i.e., the loading was prevented by the fact that to continue loading would have been a breach of the law of the port of loading, and whether, if that was established, it excused the charterer. If illegality was an excuse at all it must operate on the loading. The law relied on must be the law that prevented the loading of the vessel—the act of loading. It was not enough to point to a law which made it an offence to load the vessel during a particular part of the lay days, however large a part they might be, and to say that that prevented the loading of the vessel. What was prevented was not the loading of the vessel, but the loading of the vessel within a particular time prescribed by the charterparty. The result was that the charterers had failed to discharge the ship within the lay days and had failed to show any ground which excused them from the performance of their contract. Award affirmed.

APPEARANCES: *R. A. MacCrindle* (*Holman, Fenwick & Willan*); *Basil Eckersley* (*Sinclair, Roche & Temperley*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 36**

INVITEE: OFFICE CLEANER: LIABILITY OF OCCUPIER FOR INJURY

Green *v.* Fibreglass, Ltd.

Salmon, J. 23rd May, 1958

Action tried at Newcastle upon Tyne Assizes.

The defendants were the tenants and occupiers of certain offices. By agreement with the defendants the plaintiff undertook the cleaning of the offices by herself or her employees. The manner and time in which the work was to be done were entirely within the plaintiff's own discretion and when on the premises she was not the servant of the defendants but was their invitee. On 31st July, 1956, when cleaning an electric fire in the offices, the plaintiff sustained severe electrical burns caused by faulty wiring of the wires leading from the mains to the switch and socket into which the electric fire was plugged. When the defendants became tenants of the offices in 1951 they took the precaution of having them completely rewired by reputable expert electrical contractors, and it was due to the negligence of one of the contractor's workmen that the switch was dangerously wired. The defendants had no reason to suppose that the contractors had been negligent or that the installation was unsafe. The plaintiff claimed damages from the defendants in respect of her injuries.

SALMON, J., said that the case seemed to be indistinguishable from *Haseldine* v. *Daw & Son, Ltd.* [1941] 2 K.B. 343, in which it was held that the owners of lifts discharged their duty of care to invitees by employing competent experts to attend to the lift for them. Counsel on behalf of the plaintiff had sought to distinguish that decision on the ground that in the present case the defendants did not employ experts to make regular inspections of the electrical installation. But although an ordinarily prudent man might have his lift regularly examined and serviced by an expert, one who had had his premises wholly rewired by experts would not think of having the wiring examined within five years of its installation unless there was any special reason, such as an apparent fault, for him to do so. Here, there was no such reason. It was well settled that generally in an action for negligence a person was not vicariously liable for the carelessness of an independent contractor. There were, of course, cases where, by virtue of a contract or by the operation of law, an obligation might be imposed on a man to do an act, or to ensure that it was done and done carefully. In such cases, the defendant could not shelter behind any independent contractor whom he might have employed. If he breached the obligation he was liable, not in negligence, but in contract or by reason of some breach of duty other than a duty to take care. *Haseldine* v. *Daw & Son, Ltd.*, was not affected by the decision in *Thomson* v. *Cremin* [1956] 1 W.L.R. 103*n*. Moreover, *Haseldine's* case was consonant alike with principle, common sense, and a stream of authority. It was not helpful to import into this branch of the law the conception of warranty. That belonged exclusively to the law of contract. The obligation of an invitor to an invitee had nothing to do with the law of contract or quasi-contract, but was part of the law of tort. The invitee's cause of action lay in negligence and nothing else. The only obligation of the invitor in essence was an obligation imposed by law to take reasonable care and nothing more. In each case the question must be posed: How ought that obligation to be performed? The answer to that question must depend on the particular facts of each case. It followed that the claim failed against the present defendants. On the facts it would appear that there could have been no answer to the claim had it been brought against the contractors. Judgment for the defendants.

APPEARANCES: *P. Stanley Price*, Q.C., and *Lyall Wilkes* (*Gibson, Pybus & Reay-Smith*, Newcastle-upon-Tyne); *G. S. Waller*, Q.C., and *J. R. Johnson* (*R. H. Eggar*, St. Helens).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 71**

Probate, Divorce and Admiralty Division

DIVORCE: CRUELTY: WIFE'S DELIBERATE REFUSAL TO HAVE CHILDREN RIPENING TO COMPLETE REFUSAL OF SEXUAL INTERCOURSE: KNOWLEDGE OF INJURIOUS EFFECT ON HUSBAND

Ward *v.* Ward

Mr. Commissioner McKee. 10th February, 1958

Petition for divorce.

The parties were married in 1953, the husband having made clear to the wife his desire to have children. After the marriage the wife constantly made excuses for not bearing children when the matter was raised by the husband, insisted on the use of contraceptives and only allowed sexual intercourse on rare occasions. In March, 1956, the husband wrote to the wife making it clear that he was very upset by her attitude and that her failure to have children was causing him frustration. In January, 1957, the wife told the husband that she had only married him to get away from home, that she had no real affection for him and that she was not prepared to enter into further sexual relations or bear children. In March, 1957, the parties visited a doctor who found the wife adamant in her attitude and the husband distressed and nervous. The husband presented a petition alleging that his wife had treated him with cruelty, and seeking a divorce. At the conclusion of the hearing, His Honour Judge McKee, sitting as a special commissioner in divorce, adjourned the cause for argument by the Queen's Proctor. At the adjourned hearing, counsel for the Queen's Proctor argued that it was open to the court to presume that a person intended the natural consequences of his acts although that presumption was always rebuttable and that what had to be sought was the actual intention of the party and not his motive or desire. *Forbes* v. *Forbes* [1956] P. 16 was of great importance as showing that the court would draw the inference of cruelty from a course of conduct which, in its inception, probably did not stem from any conscious wish to inflict misery.

Mr. COMMISSIONER MCKEE said that he had to consider the wife's intention in refusing to have intercourse with the husband and to bear him any children. He thought it had been her intention to use him as a "meal ticket"—as someone who was prepared to support her, to look after her and to take her away from her home in which she had not been very happy; and it was not her desire to drive him away. He (his lordship) had little doubt that the wife did not desire to injure the husband's health, but she quite intentionally refused to bear his children and knew that that was causing him distress and had caused him distress over a number of years. At the beginning of 1957 she added to that refusal, not taunts as was the case in *Forbes* v. *Forbes*, *supra*, but cruel statements of her feelings towards him and of her motives in marrying him. He (his lordship) was quite satisfied that the acts of the wife were deliberate, that she knew what she was doing and that she knew that her acts caused the husband distress, but that she was so selfish that she was quite prepared to cause injury to her husband rather than give way herself. Applying the law as it had been put to him, he found that the allegation of cruelty had been made out and the husband was entitled to a decree. Decree ***nisi***.

APPEARANCES: *J. R. Cumming-Bruce* (*The Queen's Proctor*); *C. D. Chapman* and *T. R. Neving* (*Whitfield, Bell & Smith*, Scarborough).

[Reported by Miss ELAINE JONES, Barrister-at-Law] **[1 W.L.R. 693**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

A. Progress of Bills

Read First Time:—

British Transport Commission Bill [H.C.] [16th June.
Opencast Coal Bill [H.C.] [17th June.
Penybont Main Sewerage Bill [H.C.] [16th June.
Shell (Stanlow to Partington Pipeline) Bill [H.C.] [16th June.

Read Second Time:—

Birmingham Corporation Bill [H.C.] [17th June.
Defence Contracts Bill [H.C.] [17th June.
Licensing of Bulls and Boars Bill [H.L.] [19th June.
Local Government and Miscellaneous Provisions (Scotland) Bill [H.C.] [19th June.
London County Council (Money) Bill [H.C.] [16th June.
Matrimonial Causes (Property and Maintenance) Bill [H.C.] [16th June.
Merchant Shipping (Liability of Shipowners and Others) Bill [H.C.] [19th June.
Park Lane Improvement Bill [H.C.] [17th June.
Physical Training and Recreation Bill [H.C.] [16th June.
Tees Valley Water Bill [H.C.] [17th June.

Read Third Time:—

Agricultural Marketing Bill [H.L.] [18th June.
Essex County Council Bill [H.C.] [16th June.
Industrial Assurance and Friendly Societies Act, 1948 (Amendment) Bill [H.C.] [17th June.
Land Powers (Defence) Bill [H.C.] [19th June.
Maintenance Orders Bill [H.C.] [19th June.
Marriage Acts Amendment Bill [H.C.] [19th June.
Matrimonial Proceedings (Children) Bill [H.C.] [17th June.
Pier and Harbour Provisional Order (Margate) Bill [H.C.] [19th June.
Prevention of Fraud (Investments) Bill [H.L.] [17th June.
Statute Law Revision Bill [H.L.] [17th June.
Surrey County Council Bill [H.L.] [17th June.

In Committee:—

Disabled Persons (Employment) Bill [H.C.] [17th June.

B. Questions

The Withholding or Withdrawal of Passports

The Earl of Gosford said that no British subject had a legal right to a passport, the issue of which was a matter of Royal prerogative exercised on the advice of Ministers, the Foreign Secretary in particular.

Withholding or withdrawal was, however, only exercised in exceptional cases: minors suspected of being taken out of the jurisdiction illegally; persons believed on good evidence to be fleeing the country to avoid prosecution for a criminal offence; persons whose activities were so notoriously undesirable or dangerous that Parliament would be expected to support the action of the Foreign Secretary; persons who had been repatriated here at the public expense and had not repaid the money so spent. [16th June.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time:—

British Transport Commission Order Confirmation (No. 2) Bill [H.C.] [19th June.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the British Transport Commission.

State of Singapore Bill [H.C.] [17th June.

To provide for the establishment of the State of Singapore and for the peace, order and good government thereof; and for purposes connected with the matters aforesaid.

Read Second Time:—

Sale of Milk Bill [H.C.] [20th June.
South Lancashire Transport Bill [H.L.] [19th June.

Read Third Time:—

Bradford Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [19th June.
Clergy Orphan Corporation Bill [H.L.] [16th June.
Interest on Damages (Scotland) Bill [H.C.] [20th June.
Local Government (Omnibus Shelters and Queue Barriers) (Scotland) Bill [H.C.] [20th June.
London County Council (General Powers) Bill [H.L.] [16th June.
Maidstone Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [19th June.
Medical Act, 1956 (Amendment) Bill [H.C.] [20th June.
Pier and Harbour Provisional Order (Great Yarmouth) Bill [H.C.] [19th June.
Pier and Harbour Provisional Order (King's Lynn Conservancy) Bill [H.C.] [19th June.
Pier and Harbour Provisional Order (Sheerness) Bill [H.C.] [19th June.
Trading Representations (Disabled Persons) Bill [H.C.] [20th June.

In Committee:—

Finance Bill [H.C.] [18th June.

B. Questions

Legal Aid and Advice

The Attorney-General said that if sufficient solicitors indicated their willingness to undertake the work of advising, it was hoped to bring s. 7 of the Legal Aid and Advice Act, 1949, into force towards the end of this financial year. He would expect to follow that by bringing s. 5, the remaining section dealing with legal advice, into force in the next financial year.

The Lord Chancellor had reluctantly decided that he could not at present revise the financial provisions of the Legal Aid Scheme, but he would see what could be done when the Legal Advice Scheme was in operation. [17th June.

Criminal Courts (Inter-departmental Committee)

Mr. R. A. Butler announced that the Lord Chancellor had appointed the following to be members of this committee: Mr. T. H. Evans, Clerk of the Peace for Staffordshire; Dr. T. C. N. Gibbens, Senior Lecturer in Forensic Psychiatry at the Institute of Psychiatry, London; Mr. J. G. Harries, Secretary for Education, Cornwall; Sir David Hughes Parry, Q.C., Chairman of Caernarvon Quarter Sessions and Director of the Institute of Advanced Legal Studies, University of London; Professor W. J. H. Sprott, Professor of Philosophy, Nottingham University; Mr. G. A. Thesiger, M.B.E., Q.C., Chairman of West Kent Quarter Sessions and Recorder of Southend; Mrs. Barbara Wootton, J.P., Nuffield Research Fellow, Bedford College, London; Miss Nora Wynne O.B.E., J.P., Director of Carr & Co., Carlisle. [19th June.

STATUTORY INSTRUMENTS

Cereals (Protection of Guarantees) Order, 1958. (S.I. 1958 No. 956.) 5d.

County Court Districts (Miscellaneous) Order, 1958. (S.I. 1958 No. 949.) 5d.

This order, which comes into operation on 1st July, discontinues the Glossop County Court and transfers to the Hyde County Court proceedings commenced in the Glossop County Court before that date. The parishes in the Glossop district are allocated to the districts of the Buxton, Hyde and Sheffield courts. The Morpeth and Blyth County Court is constituted into two separate courts for Blyth and Morpeth and the original district is divided between them. Minor boundary revisions affect the districts of the following courts: Evesham, Mold and Watford.

Eggs (Protection of Guarantees) Order, 1958. (S.I. 1958 No. 957.) 6d.

Eggs (Revocation) Order, 1958. (S.I. 1958 No. 959.) 4d.

Fatstock (Guarantee Payments) (Marking) (Revocation) Order, 1958. (S.I. 1958 No. 960.) 4d.
Fatstock (Protection of Guarantees) Order, 1958. (S.I. 1958 No. 958.) 6d.
Fire Services (Appointments and Promotion) (Scotland) Regulations, 1958. (S.I. 1958 No. 953 (S. 43).) 8d.
Import Duties (Drawback) (No. 9) Order, 1958. (S.I. 1958 No. 974.) 5d.
Macclesfield Water Order, 1958. (S.I. 1958 No. 979.) 6d.
National Gallery (Lending Outside the United Kingdom) (No. 4) Order, 1958. (S.I. 1958 No. 976.) 4d.
National Gallery (Lending Outside the United Kingdom) (No. 5) Order, 1958. (S.I. 1958 No. 977.) 4d.
Petroleum-Spirit (Conveyance by Road) Regulations, 1958. (S.I. 1958 No. 962.) 5d.
Ploughing Grants Scheme, 1958. (S.I. 1958 No. 940.) 5d.
Ploughing Grants (Scotland) Scheme, 1958. (S.I. 1958 No. 954 (S. 44).) 5d.
Retention of Mains and Sewers Under a Highway (County of Lancaster) (No. 2) Order, 1958. (S.I. 1958 No. 945.) 5d.
Returning Officer's Expenses (Scotland) Regulations, 1958. (S.I. 1958 No. 952.) 6d.
Safeguarding of Industries (Exemption) (No. 4) Order, 1958. (S.I. 1958 No. 975.) 5d.
Stopping up of Highways (County of Berks) (No. 4) Order, 1958. (S.I. 1958 No. 972.) 5d.
Stopping up of Highways (County of Buckingham) (No. 9) Order, 1958. (S.I. 1958 No. 967.) 5d.
Stopping up of Highways (County of Lancaster) (No. 19) Order, 1958. (S.I. 1958 No. 942.) 5d.
Stopping up of Highways (County of Lancaster) (No. 20) Order, 1958. (S.I. 1958 No. 943.) 5d.
Stopping up of Highways (County of Lincoln—Parts of Lindsey) (No. 2) Order, 1958. (S.I. 1958 No. 968.) 5d.
Stopping up of Highways (London) (No. 22) Order, 1958. (S.I. 1958 No. 963.) 5d.
Stopping up of Highways (City and County Borough of Oxford) (No. 2) Order, 1958. (S.I. 1958 No. 964.) 5d.
Stopping up of Highways (County of Oxford) (No. 5) Order, 1958. (S.I. 1958 No. 934.) 5d.
Stopping up of Highways (County of Somerset) (No. 2) Order, 1958. (S.I. 1958 No. 965.) 5d.
Stopping up of Highways (County Borough of Southampton) (No. 4) Order, 1958. (S.I. 1958 No. 966.) 5d.
Stopping up of Highways (County Borough of Southport and County of Lancaster) (No. 1) Order, 1958. (S.I. 1958 No. 941.) 5d.
Wages Regulation (Baking) (England and Wales) (Amendment) Order, 1958. (S.I. 1958 No. 980.) 5d.
Wages Regulation (Retail Drapery, Outfitting and Footwear) Order, 1958. (S.I. 1958 No. 961.) 1s.
Wages Regulation (Retail Newsagency, Tobacco and Confectionery) (Scotland) (Amendment) Order, 1958. (S.I. 1958 No. 946.) 5d.
Wigton Water Order, 1958. (S.I. 1958 No. 970.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Prices stated are inclusive of postage.]

NOTES AND NEWS

Honours and Appointments

We regret that our list of Birthday Legal Honours at p. 456, *ante*, omitted the award of the C.B. to Col. J. D. KEWISH, T.D., D.L., Chairman, Territorial and Auxiliary Forces Association of the County of Chester, who is Registrar of Liverpool County Court and District Registrar of the High Court at Liverpool (admitted 1931); and of the C.B.E. to Mr. EDWARD ERNEST WREN HILTON, who was admitted in 1928.

Personal Note

Mr. Michael Edward Gregson, solicitor, of Bradford, was married on 17th June at Bingley to Miss Joan Elizabeth Flanagan.

Miscellaneous

DEVELOPMENT PLANS

COUNTY OF BUCKINGHAM DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 12th June, 1958, submitted to the Minister of Housing and Local Government. The proposals provide for the extension of the Metropolitan Green Belt to cover an additional area of approximately 88,000 acres, this area being within the Borough of High Wycombe, the Urban Districts of Beaconsfield, Chesham and Marlow, and the Rural Districts of Amersham, Aylesbury, Eton and Wycombe. The proposals consist of 1-inch, 2½-inch and 6-inch scale maps and an accompanying written statement. A certified copy of the proposals, as submitted, has been deposited for public inspection at the County Hall, Aylesbury. Certified copies of the proposals or certified extracts thereof have also been deposited for public inspection at the places stated below:—

County Planning Office, County Offices, Aylesbury.
Central Bucks Area Planning Office, 22 Walton Street, Aylesbury.
South-East Bucks Area Planning Offices, Ravenswood, Windsor Road, Slough and Elmodesham House, Amersham.
South-West Bucks Area Planning Office, 164 West Wycombe Road, High Wycombe.
High Wycombe Borough Council Offices, Municipal Offices, High Wycombe.
Beaconsfield Urban District Council Offices, Council Hall, Beaconsfield.
Chesham Urban District Council Offices, Chesham.
Marlow Urban District Council Offices, Court Garden, Marlow.
Amersham Rural District Council Offices, Elmodesham House, Amersham.
Aylesbury Rural District Council Offices, 43 Buckingham Street, Aylesbury.
Eton Rural District Council Offices, Windsor Road, Slough.
Wycombe Rural District Council Offices, 17 High Street, High Wycombe.

The copies or extracts of the proposals so deposited, together with copies or relevant extracts of the plan, are available for inspection, free of charge, by all persons interested, at the places mentioned above between the hours of 9.30 a.m. and 4.30 p.m. on Mondays to Fridays, and 9.30 a.m. to 12 noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st July, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the Bucks County Council, County Hall, Aylesbury, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

ADMINISTRATIVE COUNTY OF LONDON DEVELOPMENT PLAN

On 16th May, 1958, the Minister of Housing and Local Government amended the above development plan. A certified copy of the plan as amended by the Minister has been deposited at The County Hall, Westminster Bridge, S.E.1 (Room 314A) and certified copies of the plan as amended or certified extracts thereof so far as the amendment relates to the under-mentioned district have also been deposited at the places mentioned below:—

District: Metropolitan Boroughs of Hackney and Poplar (in the area of White Post Lane).
Places of Deposit: Hackney Town Hall, E.8; Poplar Town Hall, E.3.

The copies or extracts of the plan, so deposited, will be open for inspection free of charge by all persons interested between the hours of 10 a.m. and 4 p.m. Monday to Friday, 10 a.m. and 12 noon Saturday. The amendment became operative as from 13th June, 1958, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 13th June, 1958, make application to the High Court.

ADMINISTRATIVE COUNTY OF LONDON DEVELOPMENT PLAN

Mr. J. G. Birkett, A.M.T.P.I., will hold a public local inquiry at Lewisham Town Hall, Catford, London, S.E.6, on Tuesday, 1st July, 1958, at 10.30 a.m., into objections and representations received by the Minister of Housing and Local Government in respect of the London County Council's proposals for alterations and additions to the Administrative County of London Development Plan submitted to him under subs. (2) of s. 6 of the Town and Country Planning Act, 1947, relating to land within the Metropolitan Borough of Lewisham, situated in the Marvels Lane Area.

COUNTY OF NORTHUMBERLAND DEVELOPMENT PLAN

Bedlingtonshire Town Map

The above town map which is prepared as part of the above development plan was on 12th June, 1958, submitted to the Minister of Housing and Local Government for approval. The town map comprises the whole of the Bedlingtonshire Urban District except the breakwater at Link End, North Blyth. Certified copies of the town map as submitted for approval have been deposited for public inspection at the County Hall, Newcastle upon Tyne, 1. Certified copies of the town map have also been deposited for public inspection at the Council Offices of the Bedlingtonshire Urban District Council, Bedlington. The copies of the town map so deposited are available for inspection free of charge by all persons interested at the places mentioned above during normal office hours. Any objection or representation with reference to the town map may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 7th August, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Northumberland County Council at the office of the Clerk of the County Council, County Hall, Newcastle upon Tyne, 1, and will then be entitled to receive notice of the eventual approval of the town map.

COUNTY OF NORTHUMBERLAND DEVELOPMENT PLAN

North Tyneside District Town Map
Designation Map D/1—Wallsend on Tyne
Designation Map M/1—Newburn on Tyne
Designation Map M/2—Newburn on Tyne

The above town map and designation maps which have been prepared as part of the above development plan, were on 12th June, 1958, submitted to the Minister of Housing and Local Government for approval. The town map comprises the whole of the Municipal Borough of Wallsend and the Urban Districts of Gosforth and Newburn, the southern part of Longbenton Urban District, a small part of the southern area of Castle Ward Rural District, and a very small part of the southern area of Seaton Valley Urban District. Designation Map D/1 relates to:—

(*a*) Approximately 3·35 acres of land north of High Street West and west of Hedley Street, Wallsend.
(*b*) Approximately 4·30 acres of land north of High Street West and west of Station Road, Wallsend, and
(*c*) Approximately 0·85 of an acre of land north of Laurel Street, Wallsend.

Designation Map M/1 relates to approximately 3·95 acres of land north of West Denton Housing Estate. Designation Map M/2 relates to approximately 17·01 acres of land at the Panniers, West Denton. Certified copies of the town map and designation maps have been deposited for public inspection at the County Hall, Newcastle upon Tyne, 1. Certified copies of the town map and designation maps have also been deposited for public inspection at the offices of the district councils concerned at the addresses shown below. The copies of the town map and designation maps so deposited are available for inspection, free of charge, by all persons interested at the places mentioned above during normal office hours. Any objection or representation with reference to the town map or designation maps may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 28th August, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Northumberland County Council at the office of the Clerk of the County Council, County Hall, Newcastle upon Tyne, 1, and will then be entitled to receive notice of the eventual approval of the town map and designation maps.

Addresses of County District Councils where Maps may be inspected

Castle Ward R.D.C., Council Offices, High Street, Ponteland, Newcastle upon Tyne.
Gosforth U.D.C., Council Chambers, High Street, Gosforth, Newcastle upon Tyne, 3.
Longbenton U.D.C., Council Offices, Forest Hall, Newcastle upon Tyne, 12.
Newburn U.D.C., Council Offices, Newburn on Tyne.
Seaton Valley U.D.C., Council Offices, Seaton Valley.
Wallsend Borough Council, Town Hall, Wallsend on Tyne.

COUNTY OF NORTHUMBERLAND DEVELOPMENT PLAN

North Tyneside Green Belt

The above Green Belt proposals which are prepared as part of the above development plan were on 12th June, 1958, submitted to the Minister of Housing and Local Government for approval. The Green Belt comprises a broad tract of land extending in a belt approximately seven miles wide to the north-west of the built-up area of Newcastle upon Tyne and approximately eight miles wide astride the Tyne Valley from the Newcastle–Edinburgh main railway line at Stannington in the east as far as Hexham in the west. Certified copies of the Green Belt maps and document as submitted for approval have been deposited for public inspection at the County Hall, Newcastle upon Tyne, 1. Certified copies of the Green Belt maps and document have also been deposited for public inspection at the offices of the district councils concerned at the addresses shown below. The copies of the Green Belt maps and document so deposited are available for inspection free of charge by all persons interested at the places mentioned below during normal office hours. Any objection or representation with reference to the Green Belt may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 28th August, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Northumberland County Council at the office of the Clerk of the County Council, County Hall, Newcastle upon Tyne, 1, and will then be entitled to receive notice of the eventual approval of the Green Belt proposals.

Addresses of County District Councils where Maps may be inspected

Castle Ward R.D.C., Council Offices, Ponteland, Newcastle upon Tyne.
Gosforth U.D.C., Council Chambers, Gosforth, Newcastle upon Tyne, 3.
Hexham R.D.C., Council Offices, Prospect House, Hexham.
Longbenton U.D.C., Council Offices, Forest Hall, Newcastle upon Tyne, 12.
Newburn U.D.C., Council Offices, Newburn on Tyne.
Prudhoe U.D.C., Council Offices, Prudhoe on Tyne.
Seaton Valley U.D.C., Council Offices, Seaton Delaval.

The clerk of the Kingston and Guildford Rent Tribunals no longer attends 19 Upper Brighton Road, Surbiton, to interview callers and all business is now conducted from 36 Sydenham Road, Croydon.

Six Polish lawyers have been paying a ten-day visit to this country organised by the British Council in order to see something of the system of law and the administration of justice in Britain. Their programme included visits to the High Court and other courts of civil and criminal jurisdiction in and around London, the office of the Director of Public Prosecutions and Wormwood Scrubbs prison, a reception by the Lord Mayor at the Mansion House, attendance at a debate of the Common Council of the City of London, a visit to the Houses of Parliament, including the House of Lords sitting as a judicial tribunal, meetings with representatives of the General Council of the Bar and The Law Society, and entertainment in the Halls of the Inns of Court. The visit is on an exchange basis and a party of English lawyers will go to Poland later in the year.

Wills and Bequests

Mr. Samuel Clapham, solicitor, of Keighley, left £35,122 (£33,236 net).

Mr. Henry Brown Curwen, retired solicitor, of London, N.W., left £95,493 (£94,731 net).

Mr. John Francis Douglas Dimock, solicitor, of Retford, Notts, left £28,138 (£26,670 net).

Mr. John Charles Williams, solicitor, of Dolycoed, Carmarthen, left £19,334.

OBITUARY

MR. F. W. BLAKE

Mr. Frederick William Blake, solicitor, of Leigh-on-Sea, Essex, died on 18th June, aged 84. He was admitted in 1906.

MR. D. R. JARDINE

Mr. Douglas R. Jardine, the former England cricket captain, died on 18th June in Switzerland, aged 57. He was admitted a solicitor in 1926 and was chairman of the N.S.W. Land Agency, Ltd., and a director of the Scottish Australian Company, Ltd.

MR. R. A. NIEDERMAYER

Mr. Rudolph Alexander Niedermayer, solicitor, of Eastbourne, died recently, aged 70. He was a former president of the Eastbourne Law Society and was admitted in 1910.

SOCIETIES

At the annual meeting of the SOUTH YORKSHIRE MAGISTRATES' ASSOCIATION, held on 18th June at Sheffield, Mr. J. W. Owen, clerk to the Sheffield Justices, was appointed hon. secretary, and Mr. A. E. McVie, chairman of Barnsley Borough Magistrates, was appointed chairman.

GRAY'S INN

The following have been elected Masters of the Bench of Gray's Inn: Sir William Ivor Jennings, K.B.E., Q.C., Mr. Kenneth Robert Hope Johnston, Q.C., and Mr. John Megaw, C.B.E., Q.C.

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce the following programme: 1st July—Theatre Party to see " Variations on a Theme." Telephone Brian Burrett at HOL 0874 or Val 9871 (evenings) for details. 8th July—Drama Group: Revues, sketches and castings for future revues and plays, 6.30 p.m., Law Society's Hall. 9th July—New members' evening: 6 for 6.30 p.m., Law Society's Hall. 12th–13th July: River week-end: Telephone Brian Burrett as above for further details. 15th July—Swimming party: Telephone Brian Burrett as above for further details. 22nd July—Any questions: Members of the Society will form a panel to which everybody is invited to attend to ask their questions. 6.30 for 7 p.m., Law Society's Hall. 29th July—Mr. M. R. Hitchcock will lecture on jazz. 6.30 for 7 p.m., Law Society's Hall.

PRACTICE DIRECTION

SERVICE OF NOTICE OF APPEAL OUT OF TIME

Where for any reason notice of appeal in any case is not served in due time (e.g., because an application for a certificate under the Legal Aid and Advice Act, 1949, is pending) if the respondent's solicitors by letter accept service out of time, the " proper officer " defined by Ord. 58, r. 5 (5), has authority, on production of the letter accepting such service, to direct the appeal to be set down without requiring a formal application to the court for an extension of time under Ord. 64, r. 7.

By direction of the
Master of the Rolls.

19*th June*, 1958.

PRINCIPAL ARTICLES APPEARING IN VOL. 102

5th April to 28th June, 1958

For list of articles published up to and including 29th March, see *ante*, p. 236

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).